

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-210954

DATE: January 20, 1984

MATTER OF: M-F Services, Inc.

DIGEST:

1. Protest alleging that various solicitations for spare parts were defective because they required non-manufacturers offering to supply parts made by the approved manufacturers listed in the solicitation to submit documentation showing that they were either authorized dealers for the listed manufacturer's parts or that they intended to obtain the parts from the manufacturer listed in the solicitation or an authorized dealer is untimely where the alleged defect was apparent from the face of the solicitation but the protest was not filed until after the closing date for receipt of quotations.
2. Agency acted properly by rejecting low offer without contacting offeror to allow it an opportunity to provide data required to be submitted with offers in view of solicitation provision stating that offers submitted without this data would be found technically unacceptable.
3. Contention that the agency improperly contacted certain offerors to allow them an opportunity to submit the required data under two of the protested solicitations without allowing the protester a similar opportunity is without merit where the record shows that the agency sought to verify the data supplied with the offerors' bids but did not permit these offerors to submit any additional data.

4. The agency properly rejected an offer that did not contain either the data required by the solicitation or an assigned code number which would have relieved the offeror of the obligation to supply the data.
5. Protester contending that agency improperly failed to consider two timely submitted offers does not satisfy its burden of proof merely by providing receipts for packages it mailed to the agency that allegedly contained, among other things, the two offers where the agency states that it did not receive one offer from the protester and received the offer after the closing date for receipt of quotations.
6. There is no basis for GAO to object to the award of a contract based on the protester's contention that the agency improperly awarded the contract to a firm that intended to supply a part different from the part listed in the solicitation, since the awardee's data shows that it will supply parts manufactured by a firm which had previously supplied the item and the contracting officer reasonably determined that based on this fact and on his independent knowledge of the acceptability of the part, the awardee's offer was acceptable.

M-F Services, Inc. protests the Defense Industrial Supply Center's failure to award it contracts under nine solicitations issued during September, October, and November 1982.¹ M-F contends that it was the low offeror under

¹M-F originally protested the agency's action with respect to 12 separate solicitations. It has since withdrawn its protest regarding three of these solicitations.

each of the solicitations but still did not receive the awards. It requests that we award it "restitution" for the agency's alleged failure to properly evaluate its offers. We deny the protest in part and dismiss it in part and we deny the claim.

The agency conducted all of the procurements--for various spare parts--under the Defense Acquisition Regulation (DAR) small purchase procedures, DAR 3-600 et seq., using its automated purchasing system under which solicitations were generated by computer and the responses computer evaluated. Each of the solicitations in question identified the part required by a manufacturer's code and a part number and specified that only these items or items from another previously approved source would be acceptable. The solicitations also incorporated a provision (clause LO6) which stated that non-manufacturers offering to supply the manufacturer's part cited in the solicitation were required to submit (1) documentary evidence that it was an authorized dealer of the approved manufacturer, or (2) a copy of the quotation or invoice which established that the offeror obtained the item from the manufacturer or its authorized dealer. The clause cautioned non-manufacturers that offers submitted without this evidence would be treated as technically unacceptable.

The agency states that M-F did not receive awards under the seven protested solicitations in response to which it either submitted the low offer or an offer lower than that submitted by the awardee because M-F, a non-manufacturer, failed to provide the data required by clause LO6.

The protester does not dispute the agency's position that it did not supply the required data with its offers, but it challenges the necessity of requiring this information. M-F also argues that the agency should have contacted it after the agency determined that M-F was the low offeror and requested that it supply the necessary information at that point. It contends that the agency did call some offerors and gave them an opportunity to submit the LO6 data omitted from their offers.

The protester's contention that it was unnecessary to include clause LO6 in the solicitations is untimely. This argument involves an alleged defect in the solicitations which was apparent from the face of these solicitations. Therefore, under our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1983), M-F was required to file its protest prior to the closing dates for receipt of offers. Since M-F did not file its protest until after the awards, this argument is untimely and will not be considered. Wade Enterprises, B-211902, June 9, 1983, 83-1 CPD 641.

Regarding M-F's contention that the agency acted improperly in failing to contact it to obtain the LO6 data after it determined M-F to be the low offeror, the solicitation contained a provision which cautioned offerors that their offers would be found technically unacceptable if the LO6 data was not furnished with the offer. In view of this provision, we do not believe that the agency acted arbitrarily or improperly by rejecting M-F's offer without allowing it a second chance to submit the required data.

M-F also contends that the agency acted unfairly by contacting certain offerors other than M-F to allow them an opportunity to submit data not included with their offers. The record shows, however, that in each of the two instances cited by the protester under purchase request Nos. YPI82279000503 (YPI-503) and YPI-82279000506, both awardees submitted the required data with their offers. While the agency did call to verify the data submitted, it did not permit the offerors to submit data not originally included with the offers. M-F submitted no data with its offers in these instances; thus, the awardees were not accorded an unfair advantage over M-F.

Further, regarding YPI-503, M-F argues that the agency was already in possession of information establishing it as an authorized dealer for the solicited parts manufactured by the Hi-Shear Corporation, and therefore it should not have rejected M-F's offer for failure to include the LO6 data. We note, however, that M-F does not allege that it supplied this information in its offer. In a letter to M-F dated November 2, the

agency stated that M-F would not have to supply LO6 data in connection with items manufactured by Hi-Shear if it inserted a particular code on its offer. M-F's offer in this instance does not evidence the required code number. We do not believe that M-F is in a position to complain about the rejection of its offer when it did not include either the code number or the data in its offer.

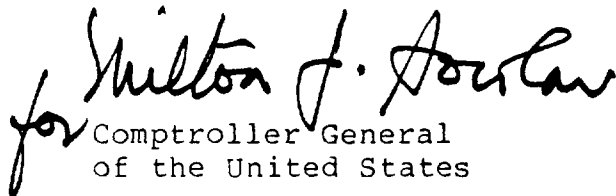
Although M-F contends that it submitted timely offers under all of the procurements, the agency states that it did not receive an offer from M-F under purchase request No. YPI 82290002309, and that it did not consider M-F's offer under purchase request No. YPI 82279000457 because it received the offer after the closing date for receipt of offers. M-F has produced receipts for packages it mailed to the agency and states that its offers under these purchase requests were contained in these packages. We do not, however, believe that M-F has satisfied its burden of affirmatively proving that its offers were timely received by the agency. See Parmatic Filter Company, B-209296, March 8, 1983, 83-1 CPD 234. In any event, even if M-F could show that the agency misplaced its offers, we have held that we will not disturb a small purchase award on such a basis absent evidence of a conscious or deliberate effort by the contracting officer to prevent the selection of the protester. See R.E. White & Associates, Inc., B-211333, June 28, 1983, 83-2 CPD 38. There is no allegation that such was the case here.

Finally, M-F states that the agency improperly awarded a contract under purchase request No. YPI82269000887 because the documentation submitted by the awardee, Hardware Metal Industries, Inc., does not show that Hardware proposed to supply a part from the approved manufacturer listed in the purchase request. In fact, Hardware's documentation showed that it is authorized to offer Voi-Shan products, not those manufactured by Hi-Shear Corp., the manufacturer listed in the purchase request. The agency has advised us, however, that based upon his knowledge of the acceptability of Voi-Shan's part and the fact that Voi-Shan had previously supplied the part, the contracting officer determined that Hardware's offer, with the accompanying Voi-Shan documentation, would be

acceptable. We note that item 8(2)(c) of the solicitation permitted offerors to offer the parts of manufacturers other than the manufacturer specified in the solicitation where the parts offered were interchangeable with the listed parts. Offerors of such parts were cautioned, however, that they should submit technical data for evaluation purposes or risk rejection of their offer. While it appears that Hardware did not submit such data, the apparent purpose of requesting the data was to insure that the part offered would be interchangeable with the part listed in the solicitation. Consequently, we do not believe that the contracting officer acted unreasonably in accepting Hardware's offer where he had independent knowledge of the acceptability of the parts Hardware intended to supply.

Since we have found no basis upon which to question the agency's actions here, M-F is not entitled to "restitution" of its costs in preparing its offer.

The protest is denied in part and dismissed in part. The claim is denied.


for Comptroller General
of the United States